ATTACHMENT 1

Federal Communications Notice and Request for Comments
June 15, 2017
WT Docket Number: 17-79

The following are the AASHTO member state comments received by AASHTO in regard to the FCC's Notice of Proposed Rulemaking and Notice of Inquiry in the matter of *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*:

States:

- Alaska
- Delaware
- Florida
- Georgia
- Idaho
- Illinois
- Iowa
- Maine
- Maryland
- Texas
- Washington
- Wyoming

ALASKA

The Alaska Department of Transportation & Public Facilities permits telecom and other utilities as well within the Right of Way along roads designated as interstate, but are not controlled access. Along controlled access facilities it would be a very rare case where a telecom or any other utility would be allowed inside the controlled access area other than to do a crossing and even those are rare. The Department has the following concerns:

The Department understands the industry's desire to get their deployments done as quickly as possible. Often permit applications are incomplete when first submitted. At this time the Department is able to complete applications submitted by other utilities within 90 days of approval or denial. However, the 90-day no-action limit is problematic in that we need to ensure that the correct contacts within the agency are given the opportunity to consider and respond. If the wrong person or agency is contacted, it would be an undue hardship on the Department to maintain safe facilities and control of our related infrastructure to meet our State's and funding partners' requirements. Having unauthorized encroachments within the right of way or attached to our infrastructure violates our agreement to control the right of way and these encroachments may pose hazards to safe travel and maintenance.

The Department has further concerns related to the location of the encroachments within the right of way; the required associated components; the unknown behavior of our infrastructure when items are attached thereto (signal poles, sign posts, etc.); the requests for competing applications for the same site or attachment; the applicant's access and maintenance needs; liability concerns regarding risk to the traveling public, costs to repair an applicant's property if damaged or destroyed, or damage to life or property to others caused by the applicant's property; concerns regarding ownership and control of an applicant's property when the applicant's entity fails or otherwise becomes defunct; as well as the best interest of the State regarding permitting a facility that could be prohibitively costly to relocate due to the location-specific nature needed for its adequate performance. In many cases the requests for these facilities includes constructing and locating buildings, fences, towers, and fuel tanks or other types of power generation. The Department asks how power will be supplied and at whose expense and responsibility. Tanks are expressly prohibited within the right of way by Alaska State regulations under 17 AAC and applications with fuel tanks are denied.

In Alaska, many corridors are adjacent to other public and private lands where the applicant can obtain an agreement to locate outside of the right of way. One such public agency is the Alaska Department of Natural Resources, which does lease or permit applications for cell towers under a separate approval process.

DELAWARE

Letter begins on the next page.

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

JENNIFER COHAN
SECRETARY

June 15, 2017

The Honorable Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

RE: Notice of Proposed Rulemaking (NPRM) on Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment.
WT Docket No. 17-79

Dear Secretary Dortch:

The State of Delaware, Department of Transportation (DelDOT) is submitting the attached comments concerning Docket Number 17-79, Notice of Proposed Rulemaking (NPRM) on Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment.

Although Docket Number 17-79 poses many questions toward county and local governments, DelDOT is submitting these comments from the perspective of the State of Delaware. Delaware is the second smallest state in the nation at only 1,982 square miles. However, DelDOT has responsibility for 5,464 centerline miles of roadway. That is almost ninety percent of all the roadways in Delaware. DelDOT has by far the greatest involvement in the State of Delaware with respect to the issues being contemplated in your public notice. The county governments in Delaware have no responsibility for roadways or own roadway rights of way. Each of the 57 municipalities in Delaware does have the responsibility for municipal roads and may respond separately to your public notice.

DelDOT

Thank you for the opportunity to offer comment. Should you wish to discuss any of our comments more fully, please feel free to contact me at 302-760-2305.

Sincerely,

Robert B. McCleary, P.E.
Chief Engineer

RM:cf/ls

Cc: Honorable Jennifer Cohan, Secretary, Department of Transportation
Bob Cunningham, Chief of Right of Way Section, DelDOT
Monroe Hite III, Manager, Right of Way Engineering, DelDOT
Eric Cimo, Utilities Engineer, DelDOT

Delaware DOT (DelDOT) comments on FCC 17-79

The Delaware Department of Transportation (DelDOT or the Department) understands expansion of mobile broadband is needed and is a national priority for continued economic development of the United States. Cell phone use has become widespread and is an ever growing form of communication. The Department understands that in some jurisdictions 70% or more of the emergency calls to 911 call centers come in over cellular telephones[1]. Emergency responders across the nation have come to rely on cellular telephones for their daily operations and response. Given these factors, DelDOT wishes to support the expansion of mobile broadband in responsible ways. The Departments responses to FCC docket #17-79 are as follows:

Response to Paragraphs 8-21: The Delaware Department of Transportation has been issuing permits for many decades before the *2009 Declaratory Ruling* or the *2014 Infrastructure Order***.** The Department sees mandatory "shot-clocks" as unnecessary and discriminatory. In order to adhere to proposed FCC regulated artificial timelines, DelDOT may need to hold applications from public utilities at a lower priory which would impact their business and give an unfair advantage to one group of actors in the ROW over all the others who have franchise rights for the use of that public space. Since the same staff who issue utility construction and safety permits are the same staff who issue Residential and Commercial entrance permits, those applicants would also be unfairly bumped out of line by the use of the unfair advantage granted by the use of a shot clock provision to the wireless industry. We believe this approach relegates all other applicants to secondary status to wireless permits. It is particularly disconcerting that such discriminatory action would come at the direction of the FCC against the businesses and citizens of Delaware. Currently the Department does not have a legally mandated response time for issuing permits to enter the State of Delaware ROW. However, the Department does utilize a best business practice of a self-imposed 14 day turnaround time performance standard. The Department's goal is to meet or exceed this value 90% of the time. Permits are processed on a 1st in-1st out basis. (Tables for 2015 and 2014 for entrance and utility permits is located in appendix A at the end of the document.)

In 2016, the Department processed 3460 utility permits. That number is greater than the 3208 utility permits in 2015 and well over the 2611 permits processed in 2014. All of these were processed without a mandatory "shot-clock" and processed in a non-discriminatory process. Mandated "shot-clocks" only are to the benefit of the wireless industry and punishes all other industries that are not wireless, and holds State DOT's responsible while there is no responsibility placed on the wireless industry. A mandatory schedule imposed by the FCC is not in the letter of, or the spirit of the remarks of Chairman Ajit Pai on 29 March, 2017. Chairman Pai stated *"…-we are pursuing a light-touch regulatory approach. This approach suggests that the Internet should be free from heavy-handed government regulation. It seeks to eliminate unnecessary barriers to infrastructure investment that could stifle broadband deployment. It aims to minimize regulatory uncertainty, which can deter long-term investment decisions. It favors facilities-based competition—that is, creating an incentive to build one's own*

[1] https://www.nena.org/?page=911Statistics

network instead of relying on another's (which depresses the deployment incentives of each). It encourages competition among companies using any technology and from any sector—cable, telco, fixed wireless, mobile, and satellite. It embraces regulatory humility, knowing that this marketplace is dynamic and that preemptive regulation may have serious unintended consequences. And it places demands on the FCC itself—to be responsive to the public and to act as quickly as the industry it regulates. This regulatory approach, not the command-and-control rules of the 20th century, is most likely to promote digital infrastructure and opportunity". [2]

"Batches" of requests, as stated in paragraph 18, institute another problem that the Delaware Department of Transportation has had to work through with at least two neutral host providers with in the wireless industry. For example Mobilite summited 5 applications for utility permits on 8/24/2016, 17 more on the next day 8/25/2017, and 13 more the following day on 8/26/2017. 18 of those 35 permits (or 48.6%) were incomplete. On 2/11/2017, Crown Castle summited 36 locations in a 2 ½ square mile area of Delaware, and asked the Department to verify who had jurisdiction of the ROW in this area. In other words, they wanted the Department to do their research work for them. Understand, the Delaware Department of Transportation currently processes a very large number of permits effectively and efficiently with a very limited number of staff, but the Department are at capacity now. Given the economic constraints in Delaware, DelDOT has no ability to hire additional State employees to process permits more quickly. If the "shot-clock" approach is adopted, Delaware will be required to hire consultant help to process these permits within a prescribed "shot-clock" timeframe in order to safeguard public safety as it relates to travelers affected by the work contemplated in these permit applications. This will constitute yet another unfunded federal mandate. Delaware will need a mechanism to recover its actual costs for administering this federal requirement. The FCC needs to consider these impacts in any proposed rulemaking.

Response to Paragraphs 32 - 41: DelDOT is concerned the FCC in their efforts to accelerate deployment of wireless facilities may overlook important necessary steps to protect natural and cultural resources. To be clear, not all areas of the ROW have been "previously disturbed" as that term is used in the National Historic Preservation Act. Of particular concern to DelDOT is that some portions of the State's ROW, and State-owned lands outside ROW, are subject to deed restrictions and environmental covenants, which were put in place to protect natural and cultural resources found on those properties. Those protections run with the land in perpetuity and were identified as important elements of the State's heritage by SHPO and waters of the United States by the US Army Corps of Engineers. Some sites preserve rare, threatened and endangered species. These discoveries and protections came as a result of the processes followed under NHPA and NEPA, as well as the Endangered Species Act. DelDOT urges the FCC to continue the protection of these resources by prohibiting wireless providers from excavating or constructing new infrastructure within the boundaries of these protected sites. The Department further urges the FCC to require wireless providers to follow a deliberate process to identify and avoid impacts to natural and cultural resources in every location where new wireless facilities will be

[2] https://apps.fcc.gov/edocs_public/attachmatch/DOC-344124A1.pdf Remarks of FCC Chairman Ajit Pai at the U.S. – India Business Council.

constructed. DelDOT does not perform the NHPA and/or NEPA application process for utilities who operate within the State ROW nor does DelDOT approve these requests. Delaware State Historic Preservation Office (DE SHPO) is a division of the Delaware Department of State[3], not the Department of Transportation. DelDOT does not have jurisdiction over DE SHPO. DelDOT again does not have any authority over the Delaware Department of Natural Resources and Environmental Control for environmental permitting. To the extent that NHPA or NEPA permitting requirements were waived or relaxed by the FCC only for the wireless industry; this action would be discriminating to all other entities (persons or businesses) that must follow these same rules for any construction project. All utilities in the State ROW must follow these same rules as specified in the DelDOT Utilities Manual regulation section 3.4.5 OTHER PERMITS[4]. The utility is solely responsible to acquire these permits before any work is performed within the ROW.

To the extent that a combined process could be developed which accounts for the protection of the many natural and cultural resources under the many federal and State level statutes, DelDOT would support such an approach.

Response to Paragraph 93: Del DOT does not currently charge an up-front application fee for utility permits or for use and occupancy agreements or a reoccurring fee for use of the State ROW. However, Delaware House Bill 189 is currently under review by the Delaware General Assembly. This bill, written and supported by the wireless industry could allow DelDOT to charge up to $100.00 per small cell facility. Delaware House Bill 189 states"…*wireless providers shall pay the actual, reasonable costs borne by the Department attributable to the processing and administration of a program to authorize the accommodation, review and issuance of construction permits, and conduct inspections of wireless facilities in the ROW if necessary. Such fees shall not exceed $100 for each small cell facility on a permit application. If there are additional non-recurring expenses associated with inspections for new installations or construction, wireless providers shall pay the actual, reasonable cost borne by the Department attributable to each provider's inspections where it exceeds the permit fee collected.*" [5] DelDOT urges the FCC to consider adoption of similar language at the federal level.

Responses to Paragraph 96: DelDOT has both proprietary and regulatory authority over the State's rights of way (ROW) in Delaware. All the State-owned ROW in Delaware was acquired by DelDOT in fee simple on behalf of the State of Delaware through Delaware Code, Title 17, §137 (a) (1) [6]. Further, all existing easements were extinguished at the time of the original acquisition. DelDOT does not grant new easements, so no other entity has a real property interest within DelDOT ROW. The Department owns all real property interests and rights in the ROW. However, DelDOT has granted many public utilities

[3] http://history.delaware.gov/index.shtml

[4] http://deldot.gov/information/business/drc/manuals/utilities_manual_2008_may_5.pdf pg. 25

[5] http://legis.delaware.gov/json/BillDetail/GenerateHtmlDocument?legislationId=25823&legislationTypeId=1&docTypeId=2&legislationName=HB189

[6] http://delcode.delaware.gov/title17/c001/sc03/

franchise rights within the ROW, which is a license for use and can be revoked. DelDOT's regulatory control over the State-owned ROW derives from Delaware Code, Title 17, §131 (a), which states, "*All the public roads, causeways, highways and bridges in this State which have been or may hereafter be constructed, acquired or accepted by the Department of Transportation shall be under the absolute care, management and control of the Department.*"[7]

The FCC has asked," *How should the line be drawn in the context of properties such as public rights of way (e.g., highways and city streets), municipally-owned lampposts or water towers, or utility conduits? Should a distinction between regulatory and proprietary be drawn on the basis of whether State or local actions advance those government entities' interests as participants in a particular sphere of economic activity (proprietary), by contrast with their interests in overseeing the use of public resources (regulatory)?"* "Economic Activity" is not allowed in the State of Delaware ROW. ROW is first and foremost a transportation corridor, not a utility or economic corridor. When Title 23 federal funding is used to acquire real property it must be for the transportation project in an approved Statewide Transportation Improvement Program (STIP) as per 23 CFR §710.203(a)(1), not for economic projects.[8] Because DelDOT has both proprietary and regulatory authority over the State's rights of way (ROW) any utility that is placed, within the ROW has been placed based upon the provisions of 23CFR §645.209, Utility Accommodation[9] and the DelDOT Utility Manual regulation. The Department does not allow utility attachment to any transportation equipment without a full engineering analyses of the utility and how it will impact the Department's structure. Lamp posts, traffic signal poles, and traffic informational structures, have not been designed or tested with wireless industry equipment attachments. As such, these poles and structures may or may not perform as they were originally engineered to perform should they be impacted by errant vehicles or high winds with new wireless attachments on existing poles. For the reason of safety, only Department equipment is authorized and approved to be installed on these poles and structures.

Even though DelDOT could enter into economic interests as the proprietor of the ROW, the Department does not do so over concerns that accommodation of private uses in the ROW will become unmanageable. While wireless services offer significant benefit to their customers, wireless providers are not public utilities under Delaware Code, Title 26, §102 (2) [10]. They are private corporations operating for a private use. As such, DelDOT cannot extend franchise rights to them. If the Department were to enter into a Use & Occupancy agreement with wireless providers, the Department would be

[7] http://delcode.delaware.gov/title17/c001/sc03/

[8] https://www.ecfr.gov/cgi-bin/text-idx?SID=8b40366d308a8d8f5b088dc37f1b6fcb&mc=true&node+se23.1.710_1203&rgn=div8

[9] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=c5f1ebfb6613c31cafd46f49f5b9e434&ty=HTML&h=L&r=PART&n=23y1.0.1.7.26#se23.1.645_1209

[10] http://delcode.delaware.gov/title26/c001/sc01/index.shtml

extending the use of the ROW to only one segment of the economy. There are many private corporations that currently provide services to customers via truck delivery such as heating oil, propane, hydrogen for fuel cells, and many industrial gases. They have not enjoyed use of the ROW and in fact have been denied accommodation in the ROW because they are not public utilities or for public use. Likewise, renewables such as wind energy and solar energy have similarly been denied accommodations because they too are for private use. All of these corporations and industries could make similar claims as the wireless providers regarding the benefits to their customers. Accommodation of the private use of the ROW by wireless providers may necessitate accommodation of many other private uses. This could lead to a proliferation of private use of the ROW and create an unmanageable public space with unending conflicts between facility owners. For those reasons, the Department does not enter into proprietorship arrangements for the use of the ROW. The Department's practice of non-accommodation is important for the public safety of all who use the transportation corridor. DelDOT believes it does not create any discriminatory business practice, because all private uses are treated the same and denied access to the ROW.

Responses to Paragraph 97: Cellular telecom-related deployment is treated differently in Delaware than non-cellular telecom deployments and deployments of public utilities in general. This is because cellular telecom is not a public utility[11], is not a public use, and, as such, is not eligible for accommodation in the ROW. Comparatively, non-cellular land line telephone service is a public utility. Public utilities are a public use and are granted franchise rights for accommodation in the ROW.

Further, private uses like cellular telecom pose certain issues for exercising eminent domain rights under Delaware Code, Title 10, §6105 (e), which is an important element in the ongoing management of the State's roadways[12]. It would be difficult if not impossible to provide replacement land to a wireless provider to relocate into when roadways need to be widened. When roadways are widened, existing public utilities (which are public uses) are relocated into areas acquired by the State specifically for that purpose. That may not be possible for wireless facilities because there are two basic tenants of eminent domain law. They are 1) that government cannot exercise a public taking for private use; and 2) government must demonstrate a public necessity for the taking. DelDOT is concerned that future relocation of wireless facilities due to roadway widening will be precluded because the taking is for a private use and there is no public necessity for the taking. Wireless facilities cannot demonstrate a public necessity to be in the ROW as their services are delivered over airwaves. As such, wireless facilities can be located anywhere. It is not a public necessity for wireless facilities to be in the ROW. Traditional pipe and wire type utilities can demonstrate a public necessity to be located in the ROW by virtue of needing to make service connections to each property fronting the roadway. When a transportation improvement project widens a roadway, all property owners are impacted along the transportation corridor because the utilities exist along the entire corridor. For a standalone pole or tower, the wireless provider nor DelDOT can prove through sound engineering practices precisely where

[11] http://delcode.delaware.gov/title26/c001/sc01/index.shtml

[12] http://delcode.delaware.gov/title10/c061/index.shtml

the pole must be placed. For example; how does the Department prove in a condemnation action that the property at 103 Main Street must be taken, but the properties located next door at 101 or 105 Main Street will not be taken? Pole locations for the cellular industry have a non-specific placement location within their network that does not require precise placement at any particular point on the ground. The pole or tower can be placed anywhere within approximately a 200 foot radius of the ideal location as the Department understands wireless cellular technology and as DelDOT has been told by representatives of the wireless industry. This draws into question whether the exercise of eminent domain powers is a viable alternative for securing the necessary ROW to relocate wireless infrastructure in advance of transportation projects; will unnecessarily delay transportation projects; and impact the wireless industry because they may not be able to find a suitable alternate location. Wireless cellular telecom deployments are treated differently because they are a private use and would be difficult or impossible to relocate when needed due to the eminent domain issue that would ensue from government taking real property from one private owner to give to another private owner. If wireless facilities cannot be relocated, their presence in the ROW will delay necessary public safety improvements to our roadways. Treating the wireless industry differently than public utilities needs to continue until such time wireless infrastructure is deemed a public use and can demonstrate an engineering necessity to be in the ROW.

In summary, The Delaware Department of Transportation is in favor of expanded wireless cellular phone service, especially into the more rural areas of the State of Delaware, but not at the detriment of the public's safety. The State of Delaware roadway system and ROW is first and foremost a transportation network to move people, goods and services safely through Delaware. Utilities may be accommodated within this corridor, but it is not an economic or utility corridor. It is for surface transportation. The Department is opposed to any federal policy or rule making that strips local control over land issues from elected state and local authority. And the Department is opposed to any federal policy or rule that could cause the defacement of historical areas or the destruction of environmentally sensitive areas of the State of Delaware.

Appendix A

2015 State of Delaware Approved Permit Totals

Statewide	Residential Entrance Permits				Commercial Entrance Permits				Utility Permits				Total Permits				
Month	On-Time	Late	Total	% On-Tim	On-Time	Late	Total	% On-Tim	On-Time	Late	Total	% On-Tim	On-Time	Late	Total	% On-Tim	Goal
Jan.	77	0	77	100%	13	0	13	100%	212	42	254	83%	302	42	344	88%	90%
Feb.	69	0	69	100%	6	0	6	100%	225	32	257	88%	300	32	332	90%	90%
Mar.	69	4	73	95%	3	0	3	100%	214	17	231	93%	286	21	307	93%	90%
April	67	4	71	94%	7	0	7	100%	185	51	236	78%	259	55	314	82%	90%
May	52	5	57	91%	7	0	7	100%	238	46	284	84%	297	51	348	85%	90%
June	67	1	68	99%	6	0	6	100%	258	45	303	85%	331	46	377	88%	90%
July	65	3	68	96%	14	0	14	100%	286	42	328	87%	365	45	410	89%	90%
Aug.	68	1	69	99%	6	0	6	100%	192	56	248	77%	266	57	323	82%	90%
Sept.	77	0	77	100%	13	0	13	100%	212	35	247	86%	302	35	337	90%	90%
Oct.	69	8	77	90%	6	0	6	100%	296	31	327	91%	371	39	410	90%	90%
Nov.	77	5	82	94%	12	0	12	100%	259	3	262	99%	348	8	356	98%	90%
Dec.	79	5	84	94%	20	0	20	100%	226	5	231	98%	325	10	335	97%	90%
Totals	**836**	**36**	872	96%	**113**	**0**	113	100%	**2803**	**405**	3208	87%	**3752**	**441**	4193	89%	

2014 State of Delaware Approved Permit Totals

Statewide	Residential Entrance Permits				Commercial Entrance Permits				Utility Permits				Total Permits				
Month	On-Time	Late	Total	% On-Tim	On-Time	Late	Total	% On-Tim	On-Time	Late	Total	% On-Tim	On-Time	Late	Total	% On-Tim	Goal
Jan.	67	11	78	86%	5	0	5	100%	120	6	126	95%	192	17	209	92%	90%
Feb.	77	14	91	85%	3	0	3	100%	181	4	185	98%	261	18	279	94%	90%
Mar.	72	2	74	97%	4	0	4	100%	167	10	177	94%	243	12	255	95%	90%
April	86	20	106	81%	12	0	12	100%	193	13	206	94%	291	33	324	90%	90%
May	89	5	94	95%	15	0	15	100%	222	19	241	92%	326	24	350	93%	90%
June	99	1	100	99%	15	1	16	94%	211	26	237	89%	325	28	353	92%	90%
July	95	2	97	98%	17	0	17	100%	197	5	202	98%	309	7	316	98%	90%
Aug.	100	8	108	93%	8	0	8	100%	310	4	314	99%	418	12	430	97%	90%
Sept.	98	5	103	95%	9	0	9	100%	236	3	239	99%	343	8	351	98%	90%
Oct.	84	4	88	95%	15	0	15	100%	211	9	220	96%	310	13	323	96%	90%
Nov.	80	6	86	93%	12	0	12	100%	191	10	201	95%	283	16	299	95%	90%
Dec.	74	3	77	96%	9	0	9	100%	260	3	263	99%	343	6	349	98%	90%
Totals	**1021**	**81**	1102	93%	**124**	**1**	125	99%	**2499**	**112**	2611	96%	**3644**	**194**	3838	95%	

FLORIDA

Maintenance

If wireless devices are going to be permitted as utilities currently are, then the following timeframes and process would apply for Florida.

- The permit form/package is reviewed by maintenance permit staff for completeness. If required documentation is missing, the applicant is contacted with a request for additional information. Per F.S. chapter 120.52, the Department has 30 days to respond to the applicant after receipt of a permit application.

- Once the maintenance office receives a complete permit the Department has 90 days to process the permit for approval or denial per F.S. chapter 120.52.

Processing the wireless device permits as utility permits will be an increased workload. However, it would be even more difficult if different timeframes for reviewing and processing these permits were used as compared to other permits managed by the Department. Permit review times should comply with state statutes.

State Utilities Office

The wireless industry has argued for years that they are a regulated utility and therefore must be regulated the same as all other utilities. Consequently, many states have changed State laws to now govern them as any other utility. This has in effect has allowed them to avoid leasing State property to install their devices. As with all other utilities, the review time, how to appeal a denial, how to set requirements, and how to relocate for roadway expansion are already in State Law. However, the “Shot Clock”, “Deemed granted”, and “except as provided” methods are in stark contrast with how all other utilities are governed even the wireless industries competitors. If these are enacted, wireless devices will no longer be governed as any other utility as they have argued and the State have changed laws to do so. And future relocation for roadway expansion is not addressed. If “deemed granted” in a location how would you remove them if there was no location they could utilize. Removing barriers may effectively erase many hard-fought compromises and protection with the “all” utilities not just “wireless” utilities.

Traffic Operations

- “Least intrusive means analysis” needs clarity.
- Existing towers need current loading analysis TIA-222-G at carrier’s cost. Some reasonable future capacity margin should be maintained for the owner. Any needed improvements to the tower shall be at carrier’s cost.
- Site improvements associated with permit shall be at carrier’s cost.
- Backbone services to be delivered to the site shall be at the carrier’s cost.
- Some government agencies use ROWs for microwave links. Much of the interstitial air-rights along the ROW are encumbered or will be encumbered with connected vehicle

(DSRC) systems so new towers or RF transmitters could compromise or degrade the existing links. This engineering analysis shall be at the carrier's cost.

- The carriers shall comply with clear zone and other roadside safety standards.
- FDOT railroad ROWs have special needs. Buried signal cable routing and track expansion plans must be taken into account. Visual siting of signals along the track must not be obstructed. This engineering analysis shall be at the carrier's cost.
- Many government agencies put public safety equipment on structures so installers and maintainers must have security clearances (i.e. SLERS, FDLE, etc.).
- Electricity shall be at the carrier's cost.
- Must be able to shut off equipment (in particular broadcast style) for tower climb safety.
- NPRM reads like previous issues such as migratory bird paths, flood plains, state historical society review, and Tribal Nation review. The proposed sequencing of siting a new tower and adding to an existing structure or tower needs clarity.
- The newly-formed FCC Broadband Deployment Advisory Committee (BDAC) is still working to make recommendations. Any action should wait until after the BDAC provides their recommendations.

GEORGIA

The Georgia Department of Transportation (GDOT) Utility Accommodations Policy and Standards (UAM) is the guiding document for a significant portion of the state. Consistent with 23 CFR, GDOT developed the UAM to promote safe and efficient operations of the state highway system.

The Official Code of Georgia Annotated (O.C.G.A.) 32-6-174 establishes authority for GDOT to "promulgate reasonable regulations governing the installation, construction, maintenance, renewal, removal, and relocation of pipes, mains, conduits, cables, wires, poles, towers, tracks, traffic and other such signals, and other equipment of any utility in, on, along, over, or under any part of the state highway system or any public road project which the department has undertaken or agreed to undertake or which has been completed by the department pursuant to its authority. In addition to the requirements of such department regulations, it shall be the responsibility of the utility to obtain whatever franchise is required by law." Subsequently, O.C.G.A. 32-4-42 and O.C.G.A. 32-4-92 (Exhibit A) provide that counties and municipalities in Georgia may also establish reasonable rules and grant permits so long as rules are not more restrictive than the GDOT.

Additionally, the State Transportation Board has established Board Rules (672-11-.01 through 672-11-.04) that allow fees to be collected. Fees associated with utility permits support our statewide utility program only, including but not limited to online permitting via the Georgia Utility Permitting System (GUPS) and any technological maintenance associated with the program, the Subsurface Utility Engineering (SUE) Program, the Utility Coordination Program, preconstruction activities, construction activities, and billing and payments related to project delivery. As a result, GDOT has a tremendous partnership with the utility industry and local governments within our state. These programs and other aspects sourced by utility permit fees is a key contributor to Georgia being recognized as a national leader in utility programming and coordination to enhance and expedite project delivery.

Since the inception of the GDOT Wireless Facilities policy, companies have installed numerous antennas with the highway rights of way via collocation while other companies have "lobbied" for the ability to place standalone structures to support wireless facilities. The current GDOT UAM 5.11 Wireless Facilities policy does not prohibit wireless facility installation but restricts installations to collocation via existing utility infrastructure or Department facilities. It is the responsibility of the wireless service provider, as with other attachees, to establish an agreement with the requisite utility pole owner as GDOT does not have authority to regulate collocation on privately owned utility facilities.

The GDOT utility permit process is completely electronic and is initiated by a submittal by a utility via GUPS. This submittal is routed to the appropriate District and subsequently reviewed for completeness and policy compliance. The District has authority to issue the permit unless a specialty review or "higher" level approval is required. Once approved, an email is sent to the utility notifying them of any additional required provisions and establishes the point of contact for the field inspector responsible for project oversight. Furthermore, GDOT has a stated goal of 5 days to review and approve utility encroachment permits.

GDOT offers the following as comments specific to elements of the FCC NPRM:

Information on the various steps that regulatory authorities employ at each stage of reviewing applications and which step have been most effective resolving tensions among competing priorities of network deployment and other public interest goals

- Upfront identification of the “rules of engagement”
- Pre-application reviews are particularly helpful to reinforce relationships, establish holistic reviews, and identify mitigation opportunities. This has proven most effective as the “clock” is not running and all parties get a chance to identify fatal flaws and other non-negotiable items
- Applicants include adequate levels of detail for use in the review process

What can siting applicants do to help streamline or expedite the siting review process?

- Share info across carriers for desired locations
    - Identify opportunities to collocate prior to submittals
- Provide detailed location information for mapping purposes
    - GPS Coordinates for use in creating a database of antenna/antenna structure locations
- Establish baseline agreements with regulatory authorities and other utilities, i.e. power companies
    - Baseline fee structure
    - Baseline design criteria
- Strategically group requests to minimize staff allocation for reviews by the regulatory authority
    - By route or geographic area
    - By facility type
    - # of sites per application
- Identify “non-starters” for the regulatory authority/Familiarize with local ordinances or special considerations
    - Pole heights
    - Existing Historical, scenic/view shed, zoning or other environmental restrictions

Are there siting practices that applicants should adopt that will facilitate faster local review while still achieving the deployment of infrastructure necessary to support advanced wireless broadband services?

- Applicants should establish relationships and coordinate regularly with agencies to establish a comprehensive plan across the jurisdiction.
- Reduce the amount of speculative inquiries to the regulatory authority
    - Provide a specific regional and/or local point of contact
- Provide complete and detailed information for requests that do not coincide with established policy
    - Applicant should perform the necessary due diligence on each request but more importantly on potential policy exceptions. This is inclusive of cost implications but should primarily be based on technical and physical constraints

“Deemed Granted”/Shot Clock

- The Commission or other pertinent Federal governing body should establish a policy guide that includes timeframes for review, safety, technical and physical, and aesthetic considerations for regulatory authorities to adopt or draft policy around.
    - Timeframes should be consistent with the level of review required by the request
    - As noted in the proposed rule, establishing timeframes based on new installations, versus collocation or by zoning area are reasonable points of demarcation
    - “Pre-application” reviews should be encouraged and separated from an “official” application submittal

The proper role of aesthetic considerations in the local approval process

- Local and State agencies have designated roadway corridors and other areas that have special designations for utility and other above ground feature placement. These designations are often to preserve the aesthetic qualities of these corridors. As such, the Commission should establish guidance on what constitutes “substantial evidence in a written record” while also encouraging providers to work within those bounds. Part of the “pre-application” process should include understanding what those “written records” are in addition to any other considerations not deemed “general concerns” in an effort to find mitigation opportunities.

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FCC seeks parties to submit facts and evidence on the issues discussed below and on any other matter relevant to the policy proposals set forth here.

1. Information on the prevalence of barriers, costs thereof, and impacts on investment in and deployment of wireless services, including how such costs compare to the overall cost of deployment.
    a. Information on the specific steps that various regulatory authorities employ at each stage in the process of reviewing applications, and which steps have been most effective in efficiently resolving tensions amount competing priorities of network deployment and other public interest goals. Siting review process in Idaho is not developed. The review process at current is through regular utility right-of-way encroachment permitting. Idaho is currently reviewing its policy and evaluating any changes to appropriately address applications by wireless carriers for possible locations on state owned rights-of-way.
    b. Parties should detail the extent to which the Commission's existing rules and policies have or have not been successful in addressing local siting review challenges, including effects or development since the 2014 Infrastructure Order. Idaho is just starting to address policy concerns in relation to the Commission's existing rules and policies in siting wireless facilities including towers. Idaho is very concerned that some of the Commission's rules run into managing state owned property which may be contrary to provisions in the Idaho Constitution and statute. Additionally, Idaho has serious concerns regarding the Commission's rules which allow subsequent expansion of permitted locations within the rights of way.
2. We invite commenter to discuss what siting applicants can or should be required to do to help expedite or streamline the siting review process.
    a. Are there ways in which applicants are causing or contributing to unnecessary delay in the processing of their siting applications? Idaho has received an influx of applications from a back-haul provider who presented vague, pin point locations on Google maps. These locations have not been vetted for actual realization of a site by that applicant. Idaho has also entered into discussion with applicants and discovered that the actual "tower" is not a reality but a speculative proposal. The applicant has provided no engineering drawings or safety precautions that other above ground utilities have incorporated; i.e. break away poles. Idaho has experienced applicants who flood the application office with multiple applications overloading the office with incomplete applications and seek to rely on the state agencies to provide location information and other technical information which should be provided by the applicant. In other words, thus far applicants in Idaho seem to expect the State to do the location research and provide the locations in the State's rights of way with little effort or cost on the part of the applicant. Also, applicants have been reluctant to specify the types of poles and equipment they anticipate using citing trade secret and/or asserting

that the anticipated equipment is still in development and that they are unable to disclose the specifications of the equipment to be used.

IF so, we seek comment on how we should address or incorporate this consideration in any action we take in this proceeding. The Commission's rules regarding incomplete applications minimally addresses this step but does not stop the frustration of start-up wireless providers with no "actual plan" only a discussion of multiple possibilities should be discouraged.

b. Are there any steps the industry can take outside the formal application review process that may facilitate or streamline such review? The industry can approach agencies they are seeking property use from with a beginning collaborative effort and actually have concrete plans of site placement, engineered drawings of the facility to be installed and presentation of factual information of proposed users of the facility. How long will this actual applicant own the facility? Is the applicant just around to construct the facility and sell? Will there be collocation on this facility? What is the potential need to increase the number of facilities should other entities obtain their own locations in the rights of way.

c. Are there siting practices that applicants can or should adopt that will facilitate faster local review while still achieving the deployment of infrastructure necessary to support advanced wireless broadband services? Yes. In a well-developed industry which is now in need of a multitude of smaller cells to promote 5G wireless, the start-up companies providing back haul service should develop engineered plans for facilities that actually incorporate into the siting location they seek approval. This requires the applicant to do actual research and background on the site and what the approval entity would want and how to integrate into the siting location. There should be provisions included that prevent the applicant from "underestimating" the number of locations needed then to require the agency to allow more locations than originally represented in order to have a functioning system. Additional provisions should be included to address the potential proliferation of sites to accommodate multiple providers to ensure that the state has ultimate control over what goes in its rights of way which is primarily to accommodate for vehicular transportation. The timelines set by the Commission do not take in normal process for a similar zoning process. This would require entities to conduct public meeting(s) on the application and also should require the applicant to provide notices to all surrounding property owners. The information provided to the surrounding property owners must specifically detail the actual equipment proposed to be placed in the right of way, not mere examples. This way the entire community has the ability to voice any concerns on the siting location and its effect; then the applicant can work to resolve these concerns with the community. Provisions should be included to allow an agency to refuse an applicant based on public opposition. The applicants are seeking to use property that is held by agencies/entities for the use and good of the public which may, and in Idaho's case does, have specific protections afforded to it by the state Constitution.

3. Address whether FCC should adopt one or more of the three options discussed below regarding the mechanism for implementing a "deemed granted" remedy. FCC seeks

comment on the benefits and detriments of each option and invites parties to discuss our legal analysis. FCC seeks comments on whether there are other options for implementing a "deemed granted" remedy.

a. Irrebuttable Presumption – the FCC's determination of the reasonable time frame for action (applicable shot clock deadline) would "set an absolute limit that – in the event of a failure to act-results in a deemed grant. *See 2009 Shot Clock Declaratory Ruling* and *City of Arlington v. FCC*, 668 F.3d at 251; *2014 Infrastructure Order; Montgomery County*, 811 F3d. 121, 128. This "deemed granted" presumption is the most disturbing of all. The federal government in other situations like federal programs wherein the federal government is providing funding to the states to implement a federal program can and will use the federal funding as a carrot and if not followed by the state, the stick is no funding. The Commissions implementation of a more connected community has all stick and no carrot. The federal government has not provided a carrot but an iron hand wherein the federal government ends up stating how the states will manage their property. A presumption that states if States don't meet a reasonable time frame means the application is granted and the applicant is allowed to construct the facility on state owned property is unacceptable and probably unconstitutional. 47 USC §253 does exempt the states from being the regulatory authority of their own property and §332 allows for any adversely affected applicant to commence action in any court of competent jurisdiction. The Commission has already defined reasonable timelines, encourages collaboration between parties and provided an avenue for recourse. This irrebuttable presumption crosses the line of state sovereignty to promote a federal program which is unacceptable and appears more of a vehicle of transferring state land to private entities rather than an apparatus to facilitate the cooperative use of state land by internet service providers

b. Lapse of State and Local Governments' Authority. In the alternative (or in addition) to the irrebutable presumption approach, FCC believes they may implement a "deemed granted" remedy for State and local agencies' failure to act within a reasonable time based on interpretations of the following: Section 332(c)(7)(A) – Should FCC interpret the phrase "except as provided elsewhere in Section 332(c)(7) as meaning that if a locality fails to meet its obligation under 332 (c)(7)(b)(ii) "reasonable period of time" then its authority over decisions concerning" that requests lapses and is no longer preserved. Under this interpretation, failure to act on an application within a reasonable period of time, the agency would result in default of its authority over such applications, and at that point no local land-use regulator would have authority to approve or deny an application. Once again this presents the concern that the federal government would take over state land ruling which would defeat state sovereignty. The phrase "except as provided elsewhere in Section 332(c) (7)" does not provide the Commission with the ability to override a State entity's decision on how to act on an application. The Commission has provided the ability for the applicant to seek redress if the applicant has suffered harm due to the lack of action of the state

entity. A side note, this allowance of redress supersedes and takes away the state entities' ability to have an administrative appeal process. The timeline set out for decision are not adequate to allow a proper administrative appeal process that would address any grievance by the applicant before seeking redress in court. The Commission should allow for a state administrative appeal process for any failure of the entity to act and only after that can the applicant seek redress in the appropriate court. Section 253 allows the Commission, after an opportunity for public comment, and a determination by the Commission that the state or local government has violated §253, to preempt the enforcement of such statute, regulation or legal requirement to the extent necessary to correct such violation or inconsistency. This would be to enforce the state or local entity to comply with the timeline and set out rules. This suggested remedy is unacceptable because it is still "deemed granted" rule implicating federal enforcement on issues within the state realm.

c. Preemption Rule. A third approach to establish a "deemed granted" remedy – standing alone or in tandem with one or both of the approaches outlined above- would be to promulgate a rule to implement the policies set forth in Section 332(c)(7). Comment on whether the FCC could promulgate a "deemed granted" rule to implement Section 332(c) (7) and whether Section 253, standing alone or in conjunction with Section 332(c) (7) or other provisions of the Act, provides the authority for the Commission to promulgate a "deemed granted" rule. It appears that the Commissions wishes to issue a deemed granted rule no matter what and ask the state entities to choose the least offensive "deemed granted" the State or local authority can accept. The deemed granted rule that would be enforced by the Commission is unacceptable when this deemed granted would override state sovereignty no matter how it is phrased. The timelines that have been set out in the rules for approval and the ability to bring the failure to light rule provided in the rules are adequate as set.

d. With the rules implementing Section 332(c)(7)(b)(i),(ii) and (iii), and the Conference Report issued in connection with the Telecommunications Act of 1996 that [[i]t is the intent of the conferees that other than under Section 332(c)(7)(B)(iv)…the courts shall have exclusive jurisdiction over all…disputes arising under this section. Does this statement standing alone, affect our authority to adopt rules governing disputes about localities' failure to comply with their obligations under Section 332(c) (7) (B) (ii) to act on siting applications within a reasonable time? The statement alone does affect the Commission's authority to adopt rules governing disputes between companies and state and local entities. The statement that the courts shall have exclusive jurisdiction over all disputes arising under this section is clear and unambiguous. The Commission has no role to adopt rules that would affect how the state or local entity implements the direction of the timelines and objectives set out in the already present statutes.

4. Provide comments to the Commission adopting different time frames for review of facility deployments not covered by the Spectrum Act. For example, harmonizing the shot

clocks for applications that are not subject to the Spectrum Act (90 days to 60 days). This question implies that §253 and §6409 deal with the same situation. One is for new sites and the other statute is for collocation of sites already in existence. The federal government had good reasoning in setting different timelines for different applications. The state and local entities will be able to distinguish between new facilities and collocations without substantial change to the facility. IF there is any common ground the timelines in §6409 should be extended to meet with the timelines in §253 and not vice versa. Given the anticipated surge of applications to states within the next few years, even the longer timeframes will prove quite burdensome for state agencies to process.

5. Provide comments whether to establish different time frames for (i) deployment of small cell or distributed antenna System (DAS) antennas or other small equipment versus more traditional, larger types of equipment or (ii) requests that include multiple proposed deployments or, equivalently, "batches" of requests submitted by a single provider to deploy multiple related facilities in different location, versus proposal to deploy one facility. Should we align our definitions of categories of deployments for which we specify reasonable time frames for local siting review with our definition of the categories of deployments that are categorically excluded from environmental or historic preservation review? The time frames should be extended out to 90 days for all applications for deployment, with the time tolling when the entity presents the applicant with written evidence of an incomplete application including what is needed to complete the application. If new evidence is presented in presenting a complete application, then the time should be tolled again to request for additional information due to the new information presented. The time frame for batch requests should be based on the number of applications submitted and should be extended. Idaho has experienced batch requests for multiple sites with very little supporting documentation. The categories of deployment serve a legitimate purpose but the different standards and timelines are confusing and would benefit from the same timeline (longer not shorter) and with the same burden set for all deployments. Special consideration should be given to allowing a reset of the time frame for applications that are almost entirely deficient of the necessary information as this often will result in winnowing away the timeline while wasting agency resources. At least there should be a reset of the timeframe if the same applicant repeatedly submits a deficient application.
6. Commission seeks comments on what time periods would be reasonable (outside the Spectrum Act context) for any new categories of applications, and on what factors we should consider in making such a decision. For what types of categories of wireless siting applications may shorter time periods be reasonable than those established in the 2009 Shot Clock Declaratory Ruling? Idaho is unaware of any new categories of applications other than new deployments, collocations and modifications and the timelines should be as long as possible if the Commission wants to sync up all timelines, i.e. 90 days and 150 days. In setting the timeframes, the Commission must keep in mind that the property being used is in close proximity to the traveling public. The rights of way are intended to preserve the safety and convenience of the traveling public and shorter timelines deprive the agencies responsible for ensuring a safe and convenient

travel way the time necessary to evaluate multiple applications for safety, engineering, and other state and federal compliance issues.

7. Should the Commission provide further guidance to address situations in which it is not clear when the shot clock should start running, or in which States and localities on one hand, and industry on the other, disagree on when the time for processing an application begins. The shot clock should start when the application is accepted, as being complete, in writing by the entity. This is not to say that the entity should be able to just ignore an application but hand delivery of the application or submittal of electronic application should receive an email response that it was accepted and who will be assigned to review. This process of wireless siting involves so many different entities when the applicant is seeking siting on state owned public right of way that may involve cities, counties and/or highway districts approval that the determination of when the application is submitted is difficult. The application form itself should put the burden on the applicant to seek all needed approvals from outside entities. The possibility that the applicant would receive approval of a NEPA or NHPA or Tribal approval within these timelines is pure fantasy.
8. Whether there are additional steps that should be considered to ensure that a deemed granted remedy achieves its purpose of expediting review. As mentioned earlier, a deemed granted remedy is severely disturbing and may be contrary to state law and constitutions. The appropriate remedy would be to elevate the issue to a state court for resolution and have the burden on the state to explain the delay. If the court finds that the state acted in bad faith or without some acceptable reason, then an application can be deemed granted. But to have a deemed granted remedy as the default setting deprives the state of due process, places an unfair and unrealistic burden on the state agencies, and allows applicants to purposefully delay final submissions or use the deemed granted remedy as a sword against the state.
9. Moratoria issues. The moratoria is a useful tool when like here, it seems multitude of entities are caught off guard by the applications and could use the moratoria to implement policies and processes and personnel in place to deal with the application for wireless siting and therefore provide efficient process for all. An acceptable time for having moratoria could be useful in eventually having a complete application process and employee pool to deal with the applications. By prohibiting a reasonable moratoria, the effect will be inequitable application of the review process among potential applicants. Without the option of a moratoria, applicants who submit in the near future will be treated differently than applicants who submit in the distant future as states develop their review process. Prohibiting a moratoria risks setting precedence that may later be seen to be ill-advised or simply incorrect.
10. Whether there is any reason to conclude that the substantive obligation of these two provisions differ, and if so in what way. Do they apply the same standards in the same or similar situations? Do they impose different standards in different situations? The substantive obligation of these two provisions is not different. They apply to the same standards on how the state or local entity cannot discriminate or prohibit an application. A locality that violates by failing to act within the reasonable time does not also prohibit

ability to provide telecommunications by discrimination. The lack of approval by missing a deadline does not mean the entity is discriminating.

11. Whether the Commission should provide further guidance on how to interpret and apply the statutory language found in Section 253(a) and on what the interpretations it should consider. The language that prohibits a state or local entity from prohibiting all but one entity from providing telecommunications services in a particular State or locality and the language that denying a siting application on the basis that one or more carriers other than the applicant already provides wireless service in the geographic area have the effect of prohibiting the provision of wireless services appears clear that the State or local entity may not prohibit service or deny application based upon existing service is discriminatory and any basis for denial shall be on other founded written grounds. No further explanation is needed.
12. Comments on court statutory interpretation of Section 253(a) and 332(c) (7). Section 253(a) should be interpreted following the Eighth and Ninth circuits which have erected a higher burden and insisted that a plaintiff suing a municipality under Section 253(a) must show actual or effective prohibition, rather than the mere possibility of prohibition. The mere possibility can be anywhere and found in anything – it is a possibility not a probability. The fact that the plaintiff is contending discrimination should require the plaintiff to present proof, almost strict scrutiny to determine if there application process was discriminated against. By requiring the applicant alleging discrimination to meet this higher burden of proof diminishes the possibility of incongruous or conflicting determinations of where discrimination exists; thereby making the application and review process that much more predictable and efficient for future applicants. This in the end, will be beneficial to the applicant and the state. Section 332(c) (7) should be interpreted by following the First, Fourth and Seventh Circuits which have imposed a heavy burden of proof on applicants to establish a lack of alternative feasible sites, requiring them to show "not just that this application has been rejected but that further reasonable efforts to find another solution are so likely to be fruitless that it is a waste of time even to try. This puts the burden on the applicant to work with the entity to find other alternative sites that would work for the entity to approve. Rather than the entity being forced to accept any location because the applicant made it the least intrusive even if that location is unsafe.
13. Whether we should provide more specific guidance on how to distinguish legitimate denials based on evidence of specific aesthetic impacts of proposed facilities, on the one hand, form mere "generalized concerns," on the other. No further guidance is needed. The requirement for a denial is written evidence supporting the denial. Generalized concerns should be addressed by providing notice to communities or entities of the possible site. If there is a longer timeline for approval, this would happen. Aesthetic impacts like a 120' monopole in a neighborhood is not generalized and would substantiate the written reasoning for denial. Moreover, aesthetic impacts are of their very nature hyper -localized. This matter is best left to the agencies managing the land as they are best suited to be aware of various state and local laws and regulations relating to a particular site. Accordingly, there is less likelihood of conflicting laws/regulations which would complicate and prolong the application process.

14. Fees. Wireless providers have already entered into master license agreement with municipalities and pay an upfront application fee and then a proration of profits from consumers to lease the site. This is acceptable as the use of state owned right of way should only be for fair market value because the State is holding this property for the benefit of the public. There are bargains or exchanges that could be negotiated between the provider and the State that could create a benefit for the public.
15. Whether Commission should reaffirm or modify the 2014 Infrastructure Order characterization of the distinction between State and local governments' regulatory roles versus their proprietary roles as owners of public resources. How should the line be drawn in the context of properties such as public rights of way (highways and city streets), municipally owned lampposts or water towers or utility conduits? Any thoughts? State exercise of authority, jurisdiction, and ownership over its land should, in all cases, be considered a proprietary. While Idaho understands that the Commission's 2014 Infrastructure Order makes a distinction, Idaho believes that such a distinction needlessly muddies the waters. However, when considering this question presently, Idaho does not believe further comments by the Commission is necessary. Idaho intends to treat the use of its rights of way as a proprietary. This approach is in harmony with the Idaho Constitution requirements and duties imposed on the Idaho Transportation Department by state law.

ILLINOIS

Letter starts on the next page.

Illinois Department of Transportation
Office of the Secretary
2300 South Dirksen Parkway / Springfield, Illinois / 62764
Telephone 217/782-5597

June 8, 2017

Mr. Jim McDonnell, P.E.
Program Director, Engineering
American Association of State Highway and Transportation Officials
444 North Capitol Street NW, Suite 249
Washington, D.C. 20001

Docket No.: WT Docket No. 17-79

Dear Mr. McDonnell:

The Illinois Department of Transportation (IDOT) appreciates the American Association of State Highway and Transportation Officials (AASHTO) offer to coordinate individual state comments related to the proposed rule for "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment" (published in the May 10, 2017 Federal Register) and to submit a collective response to the Federal Communications Commission docket. IDOT has prepared the following comments.

IDOT believes its process for review and issuance of permits is very timely, citing recent work with the fiber optic industry under the federal ARRA program. The burden of timely issuance of permits is shared by both the State and the industry. It is important that the utility fulfill its duties and meet their obligations. The industry is guided by the provisions set out in the "Accommodations of Utilities on Right-of-Way of the Illinois State Highway System" manual. Among the standard provisions that define expectations for the specific industry are:

- Clear and concise template drawings that give general information at a glance;
- A set procedure already developed in previous discussions;
- Pre-meetings at the lowest level of permitting to set parameters, make contacts and discuss concerns associated with the local environment, i.e. terrain, culture, weather, property ownership and any other location specific criteria. Not all state or Districts or cities are alike. Being aware of the traditional operation significantly helped reduce local conflict.;
- Providing a good knowledgeable contact;
- Breaking the project up into manageable pieces before submitting; IDOT used county boundaries then narrowed it to roadway sections;
- Submitting complete, accurate, readable plans and permits;

- Doing the work that is depicted on the permit in a timely manner, perhaps mirroring the Shot Clock for issuance. This avoids an overload of permits that will not be built any time soon but can trigger a Shot Clock deadline;
- Diligent and timely clean up. This reduces the number of open permits to manage;
- And, accurate and timely records and as-built drawings to allow the close out of permits.

IDOT asks that these expectations be taken into account, rather than placing the entire "time" burden on the governmental body.

Regarding the "**Deemed Granted Shot Clock**", most of IDOTs permitting expectations for issuance fall within the current Shot Clock deadlines. For most instances, this would just be an adjustment to policy and prioritizing work load for whomever receives and processes Right of Way (ROW) permits. However, as IDOT learned in working with the fiber optic industry, those time lines are discarded when there is an onslaught of permits caused by an influx of funds and rules that allow installations with little oversight. The concept behind this NPRM is to clarify that if a government authority doesn't respond in a timely manner, the permit is automatically granted. The NPRM is attempting to shift the burden of court appeal to the [local] government as opposed to the permit applicant.

The Commission should take into consideration that a company could submit all of their locations at once with no intention to perform the installations quickly. Such an action would swamp the permit offices to get multiple permits issued without full review. For example, when IDOT was asked to review fiber optic installation along the entire FAI (Interstate) 70 corridor which crosses the state, the expectation for permit review was 30 days, which was completely impossible. The proposed installation spanned two districts, multiple waterways, and many environmental and land acquisition challenges. Currently, agencies have the ability to discourage this practice. If IDOT issues the permit within the 60 day approval time, the company gets 60 days (or 150) to complete the installation or the permit is void. The utility could then space their work as well and in turn make the issuance and inspection time easier to handle with fewer "deemed granted permits".

IDOT does not see any real discernable difference in the three options for permit timing where issuance of the permit is concerned. Each gives the utility excessive privilege. It would be beneficial to concentrate on the cooperative work of getting well planned sitings. These facilities vary greatly in size, type, location and risk. For instance, it is unreasonable to assume the same time frame to issue a permit for a collocated facility and a full macro system.

If the **irrebuttable option** is used, what is the point of a permit at all? There is no incentive to submit complete, accurate and readable applications if the utility can get an irrebuttable presumption by submitting complicated, large and

incomplete documents which would take much longer to review and issue and causing a failure to issue.

Again, with the locations of State and local Authority, the utility company has no incentive to meet their obligation. But in addition to having the ability to manipulate the timing of the permit, this option takes away valuable options for future actions. For instance, if the facility is unused, neglected or simply not maintained to a point that is unsightly, unusable or unsafe, who would then take action to remedy, if the authority has been stripped from the most likely agency? Many cable companies have abandoned lines within state rights of way. The facilities are sold and/or traded quite often leaving a long trail to follow before removing dangerous poles and cables. The wireless industry is relatively new and it is unpredictable - what will be replacing it in the future?

There are locations around the state where it is difficult to determine who holds clear title to the road and adjacent property. Federal language would need to take this into account; whether it's a pause button on the "shot clock" or a clock reset during a question or dispute of the permit by government office.

Because the wireless industry is relativelty young and the probability for change could be swift, the **Preemption rule** is probably the best plan in that it is the only one that allows some ability to adjust for future changes. The commission would have some knowledge of the background decisions and a vested interest in proper protocol. Adjustment could be made in timing of permits if there is indication that it needs adjusting or if the set procedure simply fails.

Regarding "**reasonable time**", as mentioned earlier, it is not the same for the variety of installations anticipated to fall under this rule. There needs to be a cooperative effort to allow for ample time to process permits. Rushing is not the best way to get the best result. While the initial time frame will have a fairly long learning curve, the times will improve or at least become predictable.

Another area of concern is the amount of times "**provide information in writing and cite the source**" is mentioned. While correspondence certainly helps if legal issues arise, it certainly slows the process. E-mail is trackable, dated and can include all of the aspects of a formal letter including the onerous requirements to cite laws and regulations when denying or restricting installations. IDOT would like to see e-mails specifically mentioned as acceptable conveyance of documents including notifications to be given in writing, including electronic transmittal of documents though "portal systems".

It cannot be emphasized enough that permits requiring multi-departmental reviews could take months. The clock should not start until the permit is substantially complete and includes all of the required documentation needed to issue the permit. The required documents should be consistent with what is required for all permits. That criteria should be defined and include at a minimum:

- A completed and signed application request (or form);
- A site map and a location map;
- A written description of the type, size and location of the installation;
- A street view or plan view showing the location and depiction of each item to be installed, measured and labeled with dimensions relative to the predetermined baseline (centerline, right of way etc) or using a coordinate system in an agreed upon datum;
- A cross section showing minimum clearances pertinent to the installation type (depth and heights);
- Locations of all excavation for bore pits, handholes, borings, etc.;
- Type size and location of all appurtenances, service lines, access point for future access etc;
- Soils analysis if required for foundation work;
- Structural analysis where needed.

A large portion of the NPRM/NOI seems to go into detail about discussing possible changes to Historic Preservation and Environmental Protection reviews of placing radio towers, especially on Tribal Lands. Most of this is federal review process suggested changes, but may impact the speed and volume of ROW permit requests we receive as cellular providers continue to improve their coverage.

IDOT appreciates the opportunity to comment on this NPRM. Reviewers of these comments that have questions may contact Amy Eller, Bureau Chief of Operations, Operations Engineer, located at 2300 South Dirksen Parkway, Room 009, Springfield, Illinois 62764, by telephone at (217) 782-7231.

Sincerely,

Randall S. Blankenhorn
Secretary

IOWA

The Iowa DOT's comments to AASHTO on the **NPRM on Accelerating Wireless Broadband Development by Removing Barriers to Infrastructure Development** follow.

The Iowa DOT recognizes the wide scale usefulness of having improved wireless broadband capabilities. The State of Iowa recently passed legislation that promotes this concept. The legislation seeks to strike a balance between having reduced regulatory impediments in broadband implementation with the need to protect the public interests. The department's comments and views that follow are intended to reflect that essential balance.

Iowa's recent legislation (effective July 1, 2017) addresses some of the issues considered in the NPRM:

(1) Iowa has existing rules that provide for a shot clock with irrebuttable presumption (paragraph 10) after 90 days (after complete information submittal for the accommodation permit on State and Local Public Agencies). This does not affect Iowa adversely, as we have a 10-day response time required under normal circumstances.

(2) Permitting agency requirements are the primary consideration, as long as they are fairly applied and treat wireless facilities the same as other utilities.

(3) Fees that are allowed to be collected are limited and wireless providers may not be charged any more than non- wireless facilities for similar installations. Some other specific limitations in acceptable charges are listed.

These proposed limitations and restrictions describe above in the NPRM are not a concern and Iowa will be able to meet the requirements as written, as they are less restrictive than our new state requirements. These proposed limitations and restrictions seem reasonable in order to help ensure timely rollout of this new technology.

However, regarding the NPRM proposal to expand the existing Programmatic Agreements (PAs) to include activities in the transportation ROW (pole replacement, small cell facilities installation and adding new poles or infrastructure within 500 feet of existing) found in paragraphs 69,70, 71; if Iowa's recent legislation (effective July 1, 2017) is pre-empted by the NPRM regarding the permitting process activities within the transportation ROW, then known archaeological sites and burials within the DOT ROW, and indirect effects (visual) to Historic Districts could potentially be impacted; which is of concern to the Iowa DOT.

In addition, Iowa DOT strongly believes it is necessary that the state be allowed to retain reasonable control over placement and location of such wireless facilities in the highway right-of-way area in order to protect the travelling public from exposure to unsafely located obstacles and to ensure the preservation of an appropriate clear zone area for safe highway travel. Finally, Iowa DOT also believes the state should also retain reasonable control over the entry to the highway right-of-way area by wireless providers engaged in construction, maintenance or repair activities in the right-of-way in order to protect the travelling public from hazards presented by vehicles and workers entering and exiting the right of way from the travelled portion of the roadway to access such areas. All of this can be achieved through Iowa DOT's current permitting system without hindering the development of wireless infrastructure and this permitting system should be allowed to continue.

Here are the links to the new Iowa legislation that modifies the original code section, and the original code section:

AN ACT RELATING TO THE SITING OF SMALL WIRELESS FACILITIES (effective July 1, 2017)

https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=SF%20431

IOWA CELL SITING ACT (2015)

https://www.legis.iowa.gov/docs/code/8c.pdf

MAINE

Comments begin on the next page.

STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

Paul R. LePage
GOVERNOR

David Bernhardt
COMMISSIONER

June 8, 2017

Response to Notice of Proposed Rulemaking and Notice of Inquiry – Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment
WT Docket No. 17-79

The Maine Department of Transportation ("MaineDOT") is submitting comments in response to WT Docket No. 17-79, Proposed Rulemaking concerning Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment.

Like other states that have commented, MaineDOT recognizes the importance of next generation wireless broadband and is committed to supporting the economic opportunities and tremendous public benefits that are associated with this technology. However, it is also critically important to continue to recognize the role of the states and local communities to assess the applicable details associated with each and every proposed installation and appropriately balance those proposals with the function and safety of the highways, as well as any other relevant site-specific issues that may apply (e.g. shared use, corridor availability, abutter impacts, environmental considerations, etc.). This process should be recognized for its practical necessity.

As mentioned in our earlier comments in response to WT Docket No. 16-421, which we would like to incorporate by reference, there is a significant difference between a small cell attachment on an existing utility pole and a large monopole structure exceeding 120 feet in height. In Maine, roughly sixty percent of the highway right-of-ways exist within easements that were established specifically for highway purposes across property that continues to be owned

PHONE: (207) 624-3000 TTY: 888-516-9364 FAX: (207) 624-3001

by the abutters. The remaining state highway corridors are owned in fee by the State of Maine. Many of these corridors throughout the state are narrow and, while the small cell antennas can be reasonably accommodated on existing utility poles, the monopole structures will require easements from the abutters. Such easements would need to exist before an application could be considered complete.

Reponses to Specific Questions

Reasonable Period of Time to Act on Applications

MaineDOT's current Utility Accommodation Rules set forth that a utility location permit application will be processed within 60 days. In reality, the vast majority are processed in under 30 days. So, while a shot clock expectation of 60 days or more would be consistent with our current rules, such a requirement would need to be clear that the permitting entity has actually received and acknowledged a complete application package that is consistent with their published application requirements. Furthermore, while multiple small cell attachments to existing utility poles along a corridor could be packaged together, an application for a new monopole structure is a completely different proposal and would need to be defined as a single facility in a single given location. Otherwise, it would not be reasonable to limit just one side of the equation (processing time) and not the other (application scope). In addition, public entities have limited resources for processing applications, so any shot clock should inherently instill a level of prioritization by the applicant and allow a state to define a reasonable maximum number of applications within a specified time frame.

We do not believe that a "Deemed Granted" approach is appropriate for any type of facility. The only "right" that any entity receives to locate within Maine's highway corridors is a revocable permit. To minimize overall expense and downtime, it is essential that facilities are

appropriately located the first time around and there should not be any rules stating that it is in any way appropriate for an entity to construct facilities in a location that has not been explicitly approved by the applicable licensing authority, property owner or facility owner (in the case of an attachment).

Prohibit or Have the Effect of Prohibiting:

With regard to the questions set forth in Paragraph 90 on the interpretation of the phrase "prohibit or have the effect of prohibiting", we do not feel that further guidance is necessary.

With regard to the questions set forth in Paragraph 92 on aesthetic considerations, we feel that the current language is adequate and does not need more specific guidance.

With regard to the questions set forth in Paragraph 93 and 94, MaineDOT currently does not charge application or permit fees for any facilities placed upon existing utility poles within the state highway corridors. The pole owners do charge attachment fees that are fair and reasonable and the Maine Public Utilities Commission (MPUC) gets involved if any attaching entity feels that the rates may be unfair. MaineDOT would also charge comparable rates when the attachments are authorized on poles owned by MaineDOT, however attachments on state-owned poles have not been common in the past. MaineDOT will also collect fees when facilities are authorized on state-owned surplus property and such fees are consistent for any type of facilities so located.

Additional Comments

- The FCC should coordinate with the Federal Highway Administration to jointly consider the implications of any new or revised rules with respect to FHWA rules in 23 CFR 645 and 710.

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- Any new or revised rules should clearly affirm a state or local highway agencies' authority to properly manage the highway corridor in the interest of highway safety, operations, and right of way preservation for future highway purposes.
- Accommodation of wireless towers or other monopole structures within the highway corridor also present hidden public expense when relocation of those facilities cause construction delays or when such facilities are abandoned by an LLC that declares bankruptcy.

Thank you for the opportunity to comment.

Respectfully submitted, Brian T. Burne, P.E
Highway Maintenance Engineer, MaineDOT
Brian.Burne@maine.gov
207-624-3571

MARYLAND

Comments begin on the next page.

MDOT SHA Comments to AASHTO Re: FCC WT Docket No. 17-79 NPRM

The Maryland Department of Transportation State Highway Administration (MDOT SHA) is pleased to submit comments regarding the Federal Communication Commission's (FCC) *WT Docket No. 17-79 Notice of Proposed Rulemaking (NPRM) – Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment.*

MDOT SHA believes that the accelerated deployment of wireless broadband is critical to providing enhanced Fifth Generation ("5G") coverage. While MDOT SHA understands the need to deploy new equipment expeditiously in conformance with the Infrastructure Act of 2014 it must do so in a manner consistent with public safety and in conformance with Federal Highway Administration (FHWA) regulations.

Regarding the proposal in the NPRM for a "deemed granted" provision and "irrebuttable presumption," MDOT SHA has a duty to the public and our federal partners who regulate the rights-of-way (ROW) to ensure that it is used for the public good and meets all safety guidelines, including for telecommunications infrastructure utilizing space in ROWs, and urges the FCC to adopt rules that encourage cooperation for deploying wireless broadband more quickly and safely. FHWA CFR 1.23 states that facilities located in highway ROWs must be in the public interest and not interfere with the safe flow of traffic.

MDOT SHA urges the FCC to consider a "Time Out" period so that citizens may exercise their ability to ask questions and comment on telecommunications towers in a deemed granted scenario.

Our comments are divided into general comments on the NPRM and specific answers to the questions posed by the FCC.

General Comments:

When reviewing the proposed "Deemed Granted" remedy in the NPRM, the proposal should follow a standard of state or local guidelines relating to safety, and respect local zoning powers. Whereas the proposed NPRM would provide an express remedy, MDOT SHA has concerns that rules and guidelines with which the FCC is unfamiliar are being overlooked such as FHWA regulation 23 CFR 1.23 (b) and (c):

(b) Use for Highway Purposes. Except as provided under paragraph (c) of this section, all real property, including air space, within the right-of-way boundaries of a project shall be devoted exclusively to public highway purposes. No project shall be accepted as complete until this requirement has been satisfied. The State Highway department shall be responsible for preserving such right-of-way free of all public and private installations, facilities or encroachments, except (1) those approved under paragraph (c) of this section; (2) those which the Administrator approves as constituting a part of a highway or as necessary for its operation, use or maintenance for public highway purposes and (3) informational sites established and maintained in accordance with §1.35 of the regulations in this part.

(c) Other Use or Occupancy. Subject to 23 U.S.C. 111, the temporary or permanent occupancy or use of right-of-way, including air space, for nonhighway purposes and the reservation of subsurface mineral rights within the boundaries of the rights-of-way of Federal-aid highways, may be approved by the Administrator, if he determines that such occupancy, use or reservation is in the public interest and will not impair the highway or interfere with the free and safe flow of traffic thereon.

The NPRM as written also does not account for robust public comment periods / public participation in the process of a standard review, which typically includes a public meeting or town hall. In a deemed granted scenario, MDOT SHA would want to be sure that the public could provide comment if an application were to move forward without a full review. MDOT SHA urges the Commission to include a "Time Out" provision to "shot clock" rules when the delay in processing an application is caused by unanticipated feedback. The "time out" will allow MDOT SHA time to respond to requests from citizens that take time for the state or local government or applicant to investigate. Additionally, MDOT SHA recommends including within the "Deemed Granted" guidelines that an approval is contingent upon including time for public review and comment period on any application for infrastructure on a state ROW near residential structures. The State also recommends a requirement that the applicant submit a report confirming that the Radio Frequency (RF) exposure limits would be observed.

MDOT SHA recommends FCC initiate a state and local governmental review for processing applications that has sufficient review times, and revising FCC rules to meet current United States Department of Transportation (USDOT) and state/local requirements.

MDOT SHA would like to note that delays in the processing of applications occur because states and local governments are concerned with adherence to the provisions of Federal Highway Administration (FHWA) rules and policies.

MDOT SHA also notes its concerns about a set timeline at 60 days:

a. The NPRM does not consider public comment periods which are included in state/federal guidelines which in Maryland are ninety (90) days.
b. Frequently the complexity of issuing permits may be made more challenging by the requirements of coordinating with (ROW) which creates a complex application review and approval.
c. Defined time limits could result in an unintended consequence of either a reduction in the level of review afforded to projects or the need to increase staff to ensure that the agency complies with the mandates leading to increased state expenditures.

Specific Answers to FCC Questions

MDOT SHA respectfully offers the following responses to address several of the questions posed by the FCC:

1. **Expedient Application Review and Historic Preservation Effects**

   Question: "*We seek comment on what measures, if any, we should take to further speed either of these review processes, either by amending the NPA or otherwise, while assuring that potential effects on historic preservation are fully evaluated."*

   Answer: Timely application reviews may require additional staffing, with costs for those resources to be borne either by State highway funds, or applicant.

2. **Scope of Review under NHPA and NEPA**

   Question: "*We also invite comment on whether we should revisit the Commission's interpretation of the scope of our responsibility to review the effects of wireless facility construction under the NHPA and NEPA."*

Answer: MDOT SHA suggests that, to expedite the processing of permits without using a deemed granted remedy, the Commission should consider establishing "single point of contact" for applicants at federal and state agency levels to comply with all federal, state, and local government rules and statutes. The federal government has already established a model for "single point of contact" with the deployment of the nationwide public safety wireless broadband network called *First Net*.

Currently, each state is required to have a "single point of contact" (SPOC) to be the primary interface point with *First Net.* The same general principle could be applied to coordinate the siting process of wireless infrastructure in a manner that meets every federal, state and local government requirement.

3. Section 106 Review Process

Question: *"We note that since September 2016, the Commission has been facilitating meetings among Tribal and industry stakeholders with the goal of resolving challenges to Tribal requirements in the Section 106 review process, including disagreements over Tribal fees. We seek comment on whether the Commission should continue seeking to develop consensus principles and, if so, how those principles should be reflected in practice. For example, we seek comment on whether we should seek to enter into agreements with Tribal Nations and their representatives,"*

Answer: Since any identified location for antennas must be submitted to FCC or go through Tribal Review regardless of whether or not a Tribe is located in the State, MDOT encourages FCC to come to a reasonable agreement for review and fees.

4. Additional Steps Ensuring Deemed Granted Remedy Achieves Expedited Review

Question: *"We seek comment on whether there are additional steps that should be considered to ensure that a deemed granted remedy achieves its purpose of expediting review?"*

Answer: MDOT SHA urges the Commission to include a "Time Out" provision to shot clock rules when the delay in processing an application is caused by unanticipated feedback and requests from citizens that take time for the state or local government or applicant to investigate.

5. Exemption from Section 106 in rights-of-way

Question: "*We seek comment on whether to expand the NPA exemption from section 106 review for construction of wireless facilities in rights of way.*

Answer: MDOT SHA supports those efforts within the federal government to review Section 106 requirements and minimize the potential of inter- governmental duplication. In summation, MDOT SHA believes inter agency policies, which include public meetings and consultations, are sufficient to incorporate the perspectives of our citizens.

TEXAS

Memo begins on the next page.

Texas Department of Transportation

MEMO

June 8, 2017.

To: Jim McDonnell
Standing Committee on Highways, AASHTO

Through: Gus Cannon
DocuSigned by: Gus Cannon BD5C2D4A2361473...
Director ROW Division, Texas Department of Transportation

From: Beverly West
ROW Real Estate Manager

Subject: Comments re: AASHTO Work Group – Response to Notice of Proposed Rulemaking and Notice of Inquiry – Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment. (WT Docket No. 17-79)

The Texas Department of Transportation (TxDOT) appreciates the opportunity to comment on this combined notice of proposed rulemaking and notice of inquiry.

TxDOT's primary concerns regarding right of way are consistent with our mission and primary function of providing safe and efficient mobility of our citizens and goods in accordance with federal and state laws. They are;

- Safety – e.g. maintaining an appropriate and uncongested clear zone.
- Expeditious delivery of transportation projects, such that any occupying entities do not cause delay and incur costs to transportation projects, and
- Stewardship of public resources, such that TxDOT receives the appropriate compensation for the use of taxpayer resources.

TxDOT has broad authority to lease its real property assets, including but not limited to right of way, pursuant to:

- Transportation Code (TC), §202.052, Title 43 Texas Administrative Code (TAC) 43 §§21.600 to 21.606.
- Title 23 Code of Federal Regulations (23 CFR) §§710.405 to 710.407.

The TC Sec. 202, Subchapter E ("Control of Transportation Assets; Telecommunication Facilities") permits (but does not mandate) the potential leasing of state highway for the placement or sharing of telecommunication facilities of or by others on certain portions of the right of way either under TxDOT's general leasing authority (Sec. 202.052) or through an agreement under Sec, 202.093 (requiring a competitive sealed proposal process). Leasing and Agreements could involve compensation being paid to TxDOT, either in the form of cash or the shared use of the facilities.

Additionally, TxDOT has limited obligation to permit, for no cost, public utilities that also have a statutory right to occupy TxDOT right of way. TxDOT's Utility Accommodation administrative rule, 43 TAC Section 21.31(40), recognizes this, as evidenced by a "public utility" defined as;

> *"A person, firm, corporation, river authority, municipality, or other political subdivision that is engaged in the business of transporting or distributing a utility product that directly or indirectly serves the public and that is authorized by state law to operate, construct, and maintain its facilities over, under, across, on, or along highways"*.

Thus, a public utility's ability to occupy pubic right of way exists only when it has been expressly authorized by the Legislature. Texas courts have strictly construed statutes authorizing corporations to place fixtures in public road right-of-way.

Currently, TxDOT is in the planning stage of establishing a program for this type of right of way occupation. This month we held a kickoff meeting with the industry to discuss the program and establish partnering workshops to understand industry objectives, equipment and siting criteria.

As a large state with a variety of topography and ownership interests, TxDOT submits that a universal timeframe for the application and review process would not serve the public or the industry as intended. Each site determines the corresponding laws and steps that staff must take to ascertain the approval or denial of the application. The industry's preference of multiple (tens, hundreds or thousands) sites on an application must also be considered when determining a reasonable review timeframe.

The property to be leased must be surplus to TxDOT's needs for the term of the lease, and the consideration for the lease must be at least fair market value, typically established by an appraisal. The use of a universal value determination could be a challenge to the existing State law.

CC: Lauren Garduno – Director of Project Planning and Development
Trent Thomas – State Legislative Section Director

WASHINGTON

May 31, 2017

Washington State Department of Transportation Comments on FCC NPRM WT Docket No. 17-79

The Washington State Department of Transportation (WSDOT) is committed to supporting the deployment of next generation broadband technologies in Washington. This commitment aligns with our goals and mission, which include investing in smart technologies and improving the economic vitality of our state. With respect to personal wireless service facilities (wireless facilities) within state highway right of way, Washington state law distinguishes these from other types of highway encroachment – including utilities – and requires the issuance of leases at fair market value (RCW 47.04.040). This state law is consistent with 23 CFR 710 for encroachment within interstate rights of way.

The Federal Communications Commission (FCC) is seeking to explore opportunities to enact new or revised federal rules to expedite state and local approvals for wireless facilities. Focus areas of the FCC's NPRM include limiting the duration of application reviews, relaxing NEPA and NHPA (Section 106) requirements, categorizing and treating small cell sites differently than conventional cell towers, facilitating co-location of wireless facilities, and instituting federal preemption over state and local requirements.

General Comments:

- FCC should coordinate with the Federal Highway Administration to jointly consider the implications of any new or revised rules with respect to FHWA rules in 23 CFR 710.

- Any new or revised rules should clearly affirm public roadway agencies' authority to act and ultimately make decisions, at the agency's discretion, in the interest of highway safety, operations, and preservation of rights of way for future highway purposes.

- Companies should be held accountable under new rules for illegal or unauthorized installations. WSDOT is increasingly experiencing instances of wireless contractors doing work on the highway right of way before the proper authorization is granted. If FCC's goal is to expedite approvals, including the possibility of preempting state and local requirements, the necessity to obtain those approvals should be codified.

The following comments are provided after review by respective agency subject matter experts:

Design/Utilities – Section C ("Regulations" and "Other Legal Requirements")
Any new or revised rules that would define state or local control over permitting wireless facilities in terms of whether or not they are "proprietary" or "regulatory" should exempt state DOTs from those sections. State DOT obligations as stewards of highway rights of way or

collection of fair market rent for highway encroachment should not be construed as or confused with being either regulatory (i.e. exercising powers to enforce rules) or proprietary (which is sometimes used to connote intent to profit).

Environmental Services Division

2. Updating Our Approach to the NHPA and NEPA
    a. Need for Action

32, 33, 40. A compelling need for action is not clear. Since the small actions are already categorically excluded, NEPA should not be a delay. If FCC has proven that other actions should also be categorically excluded, they should use this rulemaking to expand their list of CEs.

34 -39, 41. Regarding these carrier complaints about stakeholder engagement, fees and sequential reviews, the FCC does not make a strong case that the current process is causing any substantial financial harm to carriers.

In our agency's experience, we've found that consultation with Tribes and SHPO as well as other local agencies and communities, results in better outcomes. WSDOT has negotiated NEPA protocol so that we know which Tribes are interested in certain types of actions in specific regions. WSDOT also has worked with federal, state and local permitting agencies to align design review processes. Depending on the scope of the action, we've had success with concurrent reviews using the state's Joint Aquatic Resources Permit Application (JARPA).

The FCC document notes several times the delays caused by local jurisdictions and Tribes, but also notes that the FCC can promulgate rules to address such delays; for example, FCC could make a rule that says if a Tribe or Local Agency hasn't responded to a permit within 90 days, it could be granted. This is likely a better alternative —making a 90-day "shot clock" rule—than drastic changes to the process, and cutting out NEPA and NHPA review or substantially cutting it back.

    b. Process Reforms

42 -45. WSDOT works closely with resource agencies and tribes to delivery transportation improvements. WSDOT has entered into agreements that fund tribal review on a case-by-case basis. Please note that work within a highway ROW does not lower the risk of finding significant resources. We also have contract agreements, whereby the Tribe conducts ethnographic and archaeological surveys for our projects.

64. WSDOT suggests FCC pursue a programmatic Section 106 review process. WSDOT's programmatic provides a streamlined process.
https://www.wsdot.wa.gov/Environment/CulRes/Compliance.htm#PA

65. FCC should expand its NEPA CE's for small projects that don't negatively impact the human or natural environment. FCC should not be required to do an EA solely because an action is sited in a floodplain. Like communications projects, highway projects cross multiple floodplains. An action can be located in a floodplain without having a direct or indirect impact on floodplain function. FCC should develop programmatic NEPA CE's like FHWA has done with state DOTs.

Real Estate Services Division

RES has a history with the lack of consistency in the applications received for wireless facilities. The 'shot clock' doesn't start until the application is complete, which could become an argument between WSDOT and the requesting party as to what constitutes completion.

Setting different review timeframes for different equipment installations can be problematic. Access to the installation site or impact to the motoring public may be more complicated than the size of the equipment and footprint of the Wireless Site. Example: A Distributed Antenna System (DAS) system may include micro cell sized equipment, but the installation location may be quite complicated. The SR99 Tunnel is working with wireless providers to install a DAS that will be shared between all carriers. The installation process and location has been in the works for years and required a room devoted to communications equipment in the design of the tunnel in addition to the locations for the DAS.

If there are any conflicts with changes to the approval process timeframe (Paragraphs 17-18) created through this Request for Rulemaking and RCW 47.04.045, WSDOT may need to request updating RCW 47.04.045.

ITS

Reasonable Period of Time to Act on Applications – The FCC proposed rulemaking to place a time period on applications is not taking into consideration the existing structural standards and the time needed to carefully review the wireless applications and the impacts on antenna support structures. Although the ANSI/TIA-222-G-2005 standard provides design requirements, it leaves the classification of a structure open to interpretation. WSDOT considers all it antenna support structures to be Classification III ("Structures that due to height, use or locations represent a high hazard to human life and/or damage to property in the event of failure and/or used primarily for essential communications"). Although we clearly state in our application procedures WSDOT requires a Classification III structural analysis/design, we receive applications that have design criteria of a Classification II ("Structures that due to height, use or location represent a substantial hazard to human life and/or damage to property on the event of failure and/or used for services that may be provided by other means"). Classification II has a reduced design criteria and may not require additional costs for upgrades. This adds time to the review and approval process, as we have to carefully review and then return the application for them to modify using the correct design criteria. In some cases, the structural upgrades require a third party structural engineer review to ensure the WSDOT asset will still meet the needs of the

agency. If the FCC is looking to streamline the application and approval process reasonable guidelines should be required by the wireless companies to, standardized design criteria, structural analysis, and reporting based on a public safety standard.

WYOMING

Letter starts on the next page.

Matthew H. Mead
Governor

Wyoming
Department of Transportation

"Providing a safe, high quality, and efficient transportation system"
5300 Bishop Boulevard
Cheyenne, Wyoming 82009-3340

William T. Panos
Director

June 9, 2017

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Attention: Federal Communications Commission regarding Docket No. 17-38 / WT Docket No. 17-79

Reference: Wyoming Department of Transportation comments on FCC 17-38 / WT Docket No. 17-79 , Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, published by the Federal Communications Commission (FCC) at 82 *Federal Register* 21761 *et seq.* (May 10, 2017).

The Wyoming Department of Transportation (WYDOT) thanks FCC for the opportunity to provide comments in response to this notice. In this docket, FCC has invited comment on proposals to reduce regulatory impediments to wireless network infrastructure investment and deployment.

Comments:

Streamlining State and Local Rulemaking

As required throughout state and federal law, WYDOT's primary function is to provide for safe and efficient traffic movement along Wyoming's highways.

State highway systems have greater traffic volumes, and vehicles travel at higher speeds, as fast as 80 miles per hour on some rural interstates in Wyoming, over longer distances than on roads under local jurisdiction. Accommodation of utility facilities within highway rights-of-way, including new technology, if allowed, is addressed by each individual state's utility accommodation policy, which is governed by both federal and state laws and regulations.

To make adequate provision for safety and traffic flow on freeways, states often have more restrictive policies for longitudinal utility installations within the right-of-way as provided in 23 CFR §645.209(c)(3). Rights-of-way definitions, access restrictions, and safety considerations differ between the states, but the rights granted to states to allow and regulate utilities, as provided by federal law including the Telecommunications Act in 47 USC 253 and throughout the highway provisions codified in Title 23 must not be infringed. Further, FCC action must not conflict or handcuff states' efforts to maintain highway and traffic safety and the highway's aesthetic quality, nor with federal, state, or local laws or regulations in 23 CFR §645.205(a) and 23 CFR §645.211(a) and (b).

The Wyoming Department of Transportation evaluates all proposals for facility placements as quickly as possible. When proposals for new technology are submitted, the Department must evaluate all facets of the proposal to determine if the technology can be placed inside the right-of-way without harm to the traveling public.

Companies trying to place new technology within existing highway rights-of-way should be prepared to answer questions for WYDOT and other state DOTs, as well as local government agencies. Answers need to be thorough and consistent. Some of the recent technology being proposed by telecommunications companies has been described inconsistently. States and local governments are receiving different answers to the same questions. It appears as though the technology companies are telling different agencies what they think a particular entity wants to hear and not simply providing specific facts. When information changes, WYDOT's approval process lengthens. Additionally, companies need to be prepared for state DOTs to implement new regulations and policies to accommodate new technology safely.

Because each potential utility location has unique safety and traffic circumstances, requiring a set time frame "shot clock" that all local and state governments must follow is at least unwise if not downright dangerous. All new technology proposals must be thoroughly reviewed to ensure they do not harm the traveling public. The review process must allow adequate time for safety and traffic impact analysis to occur, and the required time may exceed the "shot clock" limits in certain circumstances.

As described in the following, companies can take certain steps to speed proposal review.

Reexamining National Historic Preservation Act and National Environmental Policy Act (NEPA) Review

WYDOT requires any company proposing to place a facility on property it administers to meet all national and federal environmental laws, as it is beyond WYDOT's ability to suspend adherence to these laws for any project or encroachment. To speed proposal consideration, a company's proposal should consider all environmental impacts before submission.

Likewise, companies looking to place facilities along DOT rights-of-way inside a reservation must obtain tribal approval before requesting a DOT permit. As with environmental clearance, this independent approval cannot be granted by state DOTs and can delay proposal consideration.

WYDOT is bound by federal law relative to NEPA and tribal relations and cannot alter permit requirements unless these laws are changed.

Concurrence

To the extent that they do not conflict with these comments, the Wyoming Department of Transportation wishes to concur with comments to this docket submitted by the American Association of State Highway and Transportation Officials (AASHTO) and individual state DOTs. WYDOT urges that the commission pay special attention to these comments as they represent a unique sensitivity to highway rights-of-way issues from those dedicated to safeguarding public safety along the nation's highways.

Conclusion

If the Federal Communications Commission imposes a uniform time frame for government review of and approval for permits and denies state and local governments the ability to regulate the rights-of-way entrusted to them safely, it will create confusion within federal and state law and place these government entities in conflict with telecommunications companies that may need to be decided in court—thus slowing deployment and denying the public potential telecommunication benefits.

State and local transportation authorities simply cannot allow their responsibility to maintain right-of-way safety, as provided by the Telecommunications Act in 47 USC 253 and throughout other provisions of

federal law, to be abrogated; nor can they ignore their charge to provide safe and efficient surface transportation to be curtailed.

****

The Wyoming Department of Transportation thanks FCC for its consideration and hopes that these comments are duly considered and that the Commission acts in a manner consistent with them.

Sincerely,

William T. Panos
Director